

Message Text

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C O N F I D E N T I A L STATE 226572

RIO FOR ASSISTANT SECRETARY OF COMMERCE BLACKWELL

E.O. 11652: GDS

TAGS: EWWT, UR, US

SUBJECT: NOTE ON SOVIET VIOLATION OF MARITIME AGREEMENT

REF: MOSCOW 13089; STATE 190964

1. BELOW IS THE TEXT OF A NOTE TO BE PRESENTED TO THE
MINISTRY OF FOREIGN AFFAIRS, AT APPROPRIATELY HIGH LEVEL.
NOTE IS USG RESPONSE TO SOVIET NOTE OF AUGUST 18. IN
PRESENTING NOTE, EMBASSY SHOULD STRESS THAT USG CONSIDERS
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SOVIET VIOLATION OF THE MARITIME AGREEMENT TO BE A SERIOUS
MATTER WHICH IS UNDERMINING COOPERATION IN THE MARITIME
FIELD. EMBASSY SHOULD STATE FURTHER THAT USG LOOKS
FORWARD TO A FORTHCOMING SOVIET ATTITUDE AT THE MARITIME

NEGOTIATIONS WHICH BEGIN AT THE END OF THE MONTH. EMBASSY SHOULD STRESS, HOWEVER, THAT WE CANNOT CONTINUE TO JUSTIFY THE PRESENT SITUATION TO OUR SHIPPING INDUSTRY AND TO OUR PUBLIC. WE MUST HAVE ACTION SOON.

2. PORTIONS OF NOTE SURROUNDED BY PHRASES "(BEGIN EMPHASIS)" AND "(END EMPHASIS)" SHOULD BE UNDERLINED IN NOTE.

BEGIN TEXT. THE GOVERNMENT OF THE UNITED STATES CONSIDERS THAT THE NOTE OF THE MINISTRY OF FOREIGN AFFAIRS OF THE UNION OF SOVIET SOCIALIST REPUBLICS OF AUGUST 18 CONCERNING THE U.S.-U.S.S.R. MARITIME AGREEMENT CONTAINS SEVERAL INTERPRETATIONS WHICH ARE ERRONEOUS AND INCONSISTENT WITH BOTH THE LETTER AND THE SPIRIT OF THE AGREEMENT. IN CABLES FROM THE MARITIME ADMINISTRATION TO THE MINISTRY OF MERCHANT MARINE AND AT THE JUNE MEETING IN MOSCOW OF THE US AND SOVIET DESIGNATED REPRESENTATIVES, THE U.S. HAS POINTED REPEATEDLY TO THE CONTINUING AND WORSENING UNDERCARRIAGE OF GRAIN CARGOES BY U.S.-FLAG VESSELS, AND TO THE PERSISTENT SOVIET UNWILLINGNESS TO RECTIFY THIS SITUATION. THE FACTS CLEARLY SHOW THAT FOR THE PERIOD SEPTEMBER 1, 1975 THROUGH JULY 31, 1976 A TOTAL OF 15.34 MILLION TONS OF GRAIN WERE SHIPPED BETWEEN THE U.S. AND THE U.S.S.R. OF THIS TOTAL U.S.-FLAG SHIPS HAVE CARRIED 3.92 MILLION TONS, OR 25.55 PERCENT. THIS IS CLEARLY NOT THE (BEGIN EMPHASIS) CARRIAGE (END EMPHASIS) OF A ONE-THIRD SHARE WHICH IS GUARANTEED UNDER THE TERMS OF THE MARITIME AGREEMENT. ARTICLE 6 OF THE AGREEMENT STATES

"BOTH PARTIES INTEND THAT THEIR NATIONAL FLAG VESSELS (BEGIN EMPHASIS) WILL CARRY (END EMPHASIS) EQUAL AND SUBSTANTIAL SHARES OF THE TRADE BETWEEN THE TWO NATIONS IN ACCORDANCE WITH THE PROVISIONS OF ANNEX III."

ANNEX III 1. A. DEFINES "SUBSTANTIAL SHARE" AS

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"NOT LESS THAN ONE-THIRD OF THE TOTAL NUMBER OF WEIGHT TONS (BEGIN EMPHASIS) CARRIED (END EMPHASIS) IN THE TRADE BETWEEN THE TWO NATIONS",

AND FURTHER STATES IN 2A(II) THAT

"CARGO IS DIRECTED IN A MANNER WHICH ... IS CONSISTENT WITH THE INTENTION OF THE PARTIES THAT THEIR NATIONAL FLAG VESSELS (BEGIN EMPHASIS) WILL CARRY (END EMPHASIS) NOT LESS THAN ONE-THIRD OF BILATERAL CARGOES." (EMPHASIS ADDED)

IN ALL INSTANCES, THE AGREEMENT CLEARLY PROVIDES THAT

EACH PARTY (BEGIN EMPHASIS) WILL CARRY (END EMPHASIS) NOT LESS THAN ONE-THIRD OF THE CARGOES. THEREFORE, THE MERE (BEGIN EMPHASIS) OFFERING (END EMPHASIS) OF CARGOES BY THE SOVIET SIDE DOES NOT FULFILL THE OBLIGATIONS AND

TERMS OF THE AGREEMENT. IN ADDITION, THERE HAS BEEN NO APPARENT EFFORT BY THE SOVIET SIDE TO MAKE THE ADJUSTMENTS PROVIDED FOR IN ANNEX III 4(III) TO OFFER U.S.-FLAG SHIPS CARGOES SUFFICIENT TO ACHIEVE A ONE-THIRD SHARE OF THE CARRIAGE.

DURING THE FOURTH QUARTER OF 1975, THE FOLLOWING SEVEN U.S.-FLAG SHIPS WERE PROPERLY OFFERED TO SOVIET CHARTERERS FOR THE CARRIAGE OF GRAIN CARGOES:

VESSEL	CARGO TONNAGE
NOV MARYLAND TRADER	20,000
VANTAGE HORIZON	32,000
GOLDEN ENDEAVOR	70,000
DEC CORONADO	36,000
CHRISEA	36,000
GOLDEN DOLPHIN	70,000
GOLDEN ENDEAVOR	70,000
TOTAL	334,000

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EVEN THOUGH THESE SHIPS WERE OFFERED UNDER THE AGREED CHARTER PARTY TERMS AND CONDITIONS, THE SOVIET SIDE REFUSED TO FIX THEM. FURTHERMORE, SINCE SEPTEMBER 1975, U.S.-FLAG OWNERS HAVE, ON A MONTHLY BASIS, OFFERED MORE THAN SUFFICIENT TONNAGE TO CARRY ONE-THIRD OF THE TOTAL TONNAGE. WE HAVE FOUND NO BASIS FOR THE ASSERTION CONTAINED IN THE SOVIET NOTE THAT THE UNDERCARRIAGE IS PARTIALLY DUE TO NON-AVAILABILITY OF U.S. TONNAGE.

THE INABILITY OF U.S. SHIPS TO MEET STIPULATED LOADING SCHEDULES AND THE RESULTANT CANCELLATIONS BY SOVIET CHARTERERS IS A DELIBERATE EFFORT BY THE SOVIET SIDE TO EXCLUDE U.S.-FLAG TONNAGE FROM THIS TRADE. MANY U.S. SHIPS WHICH ARE NOT FIXED IN ANY GIVEN MONTH REMAIN AVAILABLE TO CARRY CARGO UNDER THE NEXT MONTH'S PROGRAM. NEVERTHELESS, DESPITE THE AVAILABILITY OF THIS U.S. TONNAGE IN U.S. LOADING AREAS, THE SOVIET SIDE HAS CONSISTENTLY FIXED U.S. SHIPS WHICH ARE ON CURRENT GRAIN VOYAGES, WHEN IT MUST HAVE BEEN RECOGNIZED THAT DELAYS IN SOVIET DISCHARGE PORTS WOULD CAUSE THE VESSEL TO BE LATE AND ALLOW THE SOVIET CHARTERERS TO CANCEL. TO DATE, SEVEN VESSELS TOTALING 247,500 CARGO TONS HAVE BEEN

CANCELLED BY THE SOVIET SIDE BECAUSE OF DELAYS EXPERIENCED ON PREVIOUS GRAIN VOYAGES. FURTHERMORE, EVEN THOUGH U.S.-FLAG VESSELS WERE NOT CARRYING ONE-THIRD OF THE CARGOES, IN NONE OF THESE CASES DID THE CHARTERER ALLOW AN EXTENSION OF LAY DAYS. INSTEAD, THE U.S. VESSELS WERE CANCELLED AND THE CARGO WAS ALLOTTED TO SOVIET OR THIRD-FLAG SHIPS. THE UNITED STATES CAN ONLY INTERPRET THESE ACTIONS AS A DEMONSTRATION OF SOVIET INTENT TO DENY U.S.-FLAG VESSELS A ONE-THIRD SHARE OF CARGO CARRIAGE IN CONTRAVENTION OF THE PROVISIONS OF THE AGREEMENT. THE FACT THAT U.S. VESSELS WERE FIXED AND SUBSEQUENTLY CANCELLED DOES NOT MEET THE REQUIREMENT OF THE AGREEMENT THAT U.S.-FLAG VESSELS ACTUALLY (BEGIN EMPHASIS) CARRY (END EMPHASIS) ONE-THIRD OF BILATERAL CARGOES.

THE U.S. SIDE CONSIDERS THE SOVIET CLAIM THAT AMERICAN SHIPPERS REFUSE TO ACCEPT LARGE VESSELS TO BE CONTRARY TO BOTH FACT AND PRACTICE. UNTIL MARCH 1976, THE SOVIET
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SIDE FIXED NINE GRAIN VOYAGES ON U.S.-FLAG SHIPS WHICH WERE OVER 70,000 TONS AND OVER 250 METERS IN LENGTH. DURING THE SAME PERIOD, NUMEROUS OTHER LARGE VESSELS, BOTH THIRD-FLAG AND SOVIET-FLAG, WERE ALSO FIXED. HOWEVER, AFTER THAT DATE, THE SOVIET SIDE REFUSED TO FIX ANY OF THE LARGE U.S. SHIPS, STATING THAT SHIPPERS WERE RELUCTANT TO LOAD LARGE SHIPS. NEVERTHELESS, SOVIET CHARTERERS CONTINUED AND STILL CONTINUE TO UTILIZE LARGE SOVIET AND THIRD-FLAG VESSELS, IN MANY CASES, EXCEEDING 100,000 TONS. THE UNITED STATES CAN ONLY DEDUCE, THEREFORE, THAT THE SOVIET SIDE IS USING SHIPPERS AS A PRETEXT TO DISCRIMINATE AGAINST LARGE U.S.-FLAG SHIPS IN ORDER TO EXCLUDE U.S. TONNAGE FROM THE BILATERAL GRAIN TRADE.

THE SOVIET PROPOSAL TO NEGOTIATE FREIGHT RATES DIRECTLY WITH U.S. OWNERS IS NOT IN ACCORDANCE WITH PARAGRAPH 3A OF ANNEX III, AS SUPPLEMENTED BY PARAGRAPH I A OF THE BULK MEMORANDUM OF DECEMBER 29, 1975, WHICH STATES:

"MUTUALLY ACCEPTABLE RATES ... FOR THE CARRIAGE ... OF RAW AND PROCESSED AGRICULTURAL COMMODITIES ... BY U.S.-FLAG BULK CARGO VESSELS FROM THE U.S. TO THE U.S.S.R. FOR FIXTURES MADE THROUGH DECEMBER 31, 1976, (BEGIN EMPHASIS) SHALL BE DETERMINED IN ACCORDANCE WITH THE ARRANGEMENTS AGREED TO ON SEPTEMBER 17, 1975 AND CONTAINED IN THE MEMORANDUM EXECUTED BY THE DESIGNATED REPRESENTATIVES ON THAT DATE." (END EMPHASIS) (EMPHASIS ADDED)

IN ATTACHMENT II OF THE SEPTEMBER 17, 1975 MEMORANDUM SIGNED BY THE DESIGNATED REPRESENTATIVES, PROVISION IS

MADE FOR ADJUSTING THE GULF/BLACK SEA CHARTER RATE TO DETERMINE THE FREIGHT RATE WHICH IS APPLICABLE TO CERTAIN AGREED UPON TRADE AREAS FOR THE CHARTERING OF U.S.-FLAG TONNAGE. ADJUSTMENTS TO THE BASIC GULF/BLACK SEA FREIGHT RATE WERE AGREED UPON FOR THOSE TRADE AREAS WHICH THE SOVIET SIDE CONSIDERED TO BE NECESSARY. NEVERTHELESS, BY TELEX DATED JULY 13, 1976, THE SOVIET CHARTERERS IN NEW YORK REQUESTED THAT THE MARITIME ADMINISTRATION ACQUIESCE IN THE OFFERING OF 125,000 TONS OF CARGO TO U.S. OWNERS FOR TRADE AREAS WHICH THERE IS NO MUTUALLY CONFIDENTIAL

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ACCEPTABLE RATE. THE U.S. SIDE IS PREPARED TO NEGOTIATE ADDITIONAL ADJUSTMENTS FOR DIFFERENT TRADE AREAS SHOULD THEY BE REQUIRED; HOWEVER, THE AGREEMENT AND THE SUPPLEMENTING MEMORANDUM DO NOT PROVIDE FOR U.S. OWNERS TO NEGOTIATE MUTUALLY ACCEPTABLE RATES.

THE SOVIET SIDE HAS OFFERED GRAIN CARGOES TO U.S. VESSELS WHICH ARE DESTINED TO BE DISCHARGED IN THE PORT OF NAKHODKA WITH THE CONDITION THAT THE PORT OF NAKHODKA WILL NOT ACCEPT TANKERS AND FURTHER, THAT U.S. VESSELS ARRIVE AT THE PORT WITH A DRAFT OF 32 FEET. THE SOVIET SIDE OFFERED THIS CARGO WITH THE FULL KNOWLEDGE THAT IT WOULD ELIMINATE U.S. TONNAGE THROUGH RESTRICTIONS WHICH ARE CLEARLY CONTRARY TO THE AGREEMENT. PARAGRAPH V A. OF THE BULK MEMORANDUM OF UNDERSTANDING SIGNED BY DESIGNATED REPRESENTATIVES ON DECEMBER 29, 1975 STATES THAT THE CHARTERING OF TANKERS IS SATISFACTORY. MOREOVER, PARAGRAPH V. B. OF THAT SAME MEMORANDUM STATES THAT CARGOES TO BE LIFTED BY VESSELS WILL BE LIMITED ONLY BY DRAFT LIMITATIONS OF THE LOADING PORT SINCE LIGHTENING DOWN TO DRAFT LIMITATIONS OF THE DISCHARGE PORT IS PERMITTED. FURTHER, PARAGRAPH 2 C. OF ANNEX III REQUIRES THAT CARGO BE OFFERED FOR CARRIAGE BETWEEN PORTS SERVED BY U.S.-FLAG VESSELS, WITH REASONABLE NOTICE AND UPON REASONABLE TERMS AND CONDITIONS. THE U.S. OBJECTION TO THE NOMINATION OF THIS PORT AND THE UNREASONABLE TERMS AND CONDITIONS IMPOSED THEREBY IS NOT, AS THE SOVIET UNION SUGGESTS, "A LACK OF DESIRE TO ACCEPT THE EXISTING SITUATION"; IT IS, RATHER, AN OBJECTION TO SOVIET CHARTERING PRACTICES WHICH ARE DESIGNED TO REDUCE THE U.S. PARTICIPATION IN THE CARRIAGE OF BILATERAL CARGOES.

THE RECORDS INDICATE THAT 128,224 TONS OF CARGO HAVE BEEN SHIPPED DURING AUGUST FROM U.S. GULF PORTS TO SOVIET

BALTIC OR BLACK SEA DESTINATIONS. THE PRESENCE OF THESE CARGOES CLEARLY INDICATES THAT THE SOVIET CHARTERERS COULD HAVE OFFERED U.S. SHIPS A ONE-THIRD SHARE OF THE 350,000-TON AUGUST PROGRAM BETWEEN PORTS SERVICED BY U.S.-FLAG VESSELS FOR WHICH TERMS, CONDITIONS AND FREIGHT

RATES ARE OUTLINED IN THE MARITIME AGREEMENT. INSTEAD,
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CHARTERERS CHOSE TO OFFER CARGOES TO U.S. OWNERS (1) FROM AREAS IN THE UNITED STATES NOT SERVICED BY U.S. VESSELS; (2) TO AREAS IN THE SOVIET UNION WHICH WOULD NOT ACCEPT U.S. VESSELS OR (3) ON ROUTES FOR WHICH CONDITIONS AND FREIGHT RATES WERE NOT AGREED TO BY THE DESIGNATED REPRESENTATIVES. THE U.S. SIDE FURTHER CONSIDERS THE OFFERING OF THE 23,000-TON PARTIAL CARGO ON JULY 28 BY THE SOVIET SIDE AS IMPROPER UNDER THE TERMS OF THE AGREEMENT, AS IT IS CONTRARY TO OUR MEMORANDUM OF UNDERSTANDING WHICH STATES THAT, "CARGOES TO BE LIFTED BY VESSELS WILL BE LIMITED (BEGIN EMPHASIS) ONLY (END EMPHASIS) BY DRAFT LIMITATIONS OF THE LOADING PORT" AND SHIPLOAD LOTS ARE THE BASIS UPON WHICH THE PRESENT FREIGHT RATE AGREEMENT WAS CALCULATED. (EMPHASIS ADDED)

THE SOVIET UNION HAS, THROUGH ARBITRARY ACTIONS AND MANIPULATION OF CHARTERING PRACTICES, CONSISTENTLY DENIED U.S.-FLAG VESSELS THEIR ONE-THIRD SHARE OF THE CARRIAGE OF BILATERAL CARGOES GUARANTEED UNDER THE U.S.-U.S.S.R. MARITIME AGREEMENT. THE RESULT HAS BEEN A CHRONIC AND WORSENING UNDERCARRIAGE BY U.S.-FLAG VESSELS FROM SEPTEMBER 1975 THROUGH JULY OF THIS YEAR; FURTHERMORE, IN AUGUST, THE SOVIET SIDE OFFERED CARGOES IN SUCH A MANNER AS TO EFFECTIVELY ELIMINATE U.S.-FLAG TONNAGE FROM THE PROGRAM, AND IN SEPTEMBER NO CARGOES AT ALL WERE OFFERED U.S.-FLAG OWNERS. THE LATTER IS ESPECIALLY DISTURBING SINCE OUR RECORDS SHOW THAT SEVERAL SOVIET VESSELS AND THIRD-FLAG VESSELS ARE SCHEDULED TO LOAD GRAIN IN THE U.S. GULF IN SEPTEMBER. THE DESIGNATED REPRESENTATIVE OF THE UNITED STATES HAS, ON NUMEROUS OCCASIONS, POINTED OUT THE FACTS OF THIS SITUATION TO THE SOVIET SIDE AND REQUESTED THAT ADJUSTMENTS BE MADE IN THE MONTHLY OFFERINGS TO RECTIFY THE UNDERCARRIAGE BY U.S.-FLAG VESSELS. DESPITE THESE REQUESTS, SOVIET CHARTERERS HAVE MADE NO ATTEMPT TO CORRECT THIS PROBLEM AND HAVE CONTINUED TO DISCRIMINATE AGAINST U.S.-FLAG VESSELS TO THE POINT WHERE THEY HAVE BEEN TOTALLY ELIMINATED FROM PARTICIPATION.

MOREOVER, IT IS DISQUIETING THAT AFTER OPERATING FOR MORE THAN THREE YEARS ON THE BASIS OF THE PRINCIPLE WHICH

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ALLOTS AT LEAST ONE-THIRD CARRIAGE OF BILATERAL CARGOES, THE SOVIET SIDE HAS SEEN FIT TO INTRODUCE THE NOVEL AND WHOLLY UNJUSTIFIED ASSERTION THAT THE MERE OFFERING ON PAPER OF ONE-THIRD CONSTITUTES COMPLIANCE WITH THE

AGREEMENT. AS STATED ABOVE, THIS NEWLY VENTILATED SOVIET CONTENTION IS CONTRARY TO ESSENTIAL PROVISIONS OF THE AGREEMENT AND LENDS CREDENCE TO THE SURMISE THAT THE SOVIET UNION SEEKS TO UNDERMINE THE BASIC PRINCIPLES WHICH HAVE GOVERNED THE OPERATION OF THE AGREEMENT.

CONSEQUENTLY THE GOVERNMENT OF THE UNITED STATES REGRETS IT IS UNABLE TO AGREE WITH THE ARGUMENTS OFFERED BY THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN ITS NOTE OF AUGUST 18. THE UNITED STATES REGARDS THE NUMEROUS INFRACTIONS OF VARIOUS PROVISIONS OF THE U.S.-U.S.S.R. MARITIME AGREEMENT, ANNEX III AND ITS SUPPLEMENTARY MEMORANDA AS CONTRIBUTING TO A SERIOUS EROSION OF MARITIME RELATIONS BETWEEN OUR TWO COUNTRIES AND AS REQUIRING IMMEDIATE ATTENTION. THE GOVERNMENT OF THE UNITED STATES, THEREFORE, STRONGLY URGES THE GOVERNMENT OF THE U.S.S.R. TO INSTRUCT ITS MARITIME AUTHORITIES TO COMPLY FULLY WITH THE TERMS AND PROVISIONS OF THE U.S.-U.S.S.R. MARITIME AGREEMENT WHICH RELATE TO THE SHIPMENT OF BULK COMMODITIES BETWEEN THE U.S. TO THE U.S.S.R., AND THAT SUCH COMPLIANCE AND REMEDYING OF THE UNDERCARRIAGE PROBLEM BE EFFECTED AS RAPIDLY AS POSSIBLE. FAILURE TO DO SO CAN ONLY EXACERBATE MARITIME RELATIONS FURTHER AND HEIGHTEN PUBLIC CONCERN OVER THE MERITS AND VALUE OF THE U.S.-U.S.S.R. MARITIME AGREEMENT. END TEXT. ROBINSON

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